

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 31 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRIAN BEST,

Plaintiff-Appellant,

v.

VIRGIL SMITH,

Defendant-Appellee,

and

SONOMA COUNTY SHERIFF
DEPARTMENT; et al.,

Defendants.

No. 22-16809

D.C. No. 4:19-cv-02252-YGR
Northern District of California,
Oakland

ORDER

Before: NGUYEN, FRIEDLAND, and SUNG, Circuit Judges.

On November 21, 2022, appellant filed a notice of appeal, which was timely only as to the district court's October 25, 2022 order denying appellant's second motion for reconsideration. *See Swimmer v. IRS*, 811 F.2d 1343 (9th Cir. 1987) (second motion for reconsideration does not toll time to appeal underlying judgment). The scope of this appeal is therefore limited to review of the October 25, 2022 order denying appellant's post-judgment motion.

A review of the record and the opening brief submitted on February 23, 2023 indicates that the questions raised in this appeal are so insubstantial as not to

require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). Accordingly, the motion for summary affirmance (Docket Entry No. 4) is granted.

All other pending motions are denied as moot.

AFFIRMED.